



**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS**

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**UNITED STATES OF AMERICA,**

**Plaintiff,**

**v.**

**LEWIS W. WILLIAMS, JR.,**

**Defendant.**

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) **Civil Action No.**  
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**I. BACKGROUND**

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), has filed a complaint in this matter pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §§ 9606 and 9607, as amended ("CERCLA").

B. The United States in its complaint seeks reimbursement of response costs incurred and to be incurred by EPA and the United States Department of Justice ("DOJ") for response actions in connection with the release or threatened release of hazardous substances at the 57<sup>th</sup> and North Broadway Superfund Site in Wichita, Sedgwick County, Kansas ("Site") of defendant Lewis W. Williams, Jr. ("Settling Defendant").

C. In accordance with the National Contingency Plan and Section 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F), EPA notified the State of Kansas ("State") on October 6, 1999 of negotiations with potentially responsible parties regarding the implementation of the

remedial design and remedial action for the Site, and EPA has provided the State with an opportunity to participate in such negotiations and to be a party to this Consent Decree.

D. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified the United States Department of Interior on October 6, 1999 of negotiations with potentially responsible parties regarding the release of hazardous substances that may have resulted in injury to the natural resources under Federal trusteeship and encouraged the trustee to participate in the negotiation of this Consent Decree.

E. Settling Defendant does not admit any liability to the United States arising out of the transactions or occurrences alleged in the complaint.

F. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on October 14, 1992, 57 Fed. Reg. 47180.

G. In response to a release or a substantial threat of a release of hazardous substances at or from the Site, EPA commenced on September 15, 1994 a Remedial Investigation and Feasibility Study ("RI/FS") for the Site pursuant to 40 C.F.R. § 300.430.

H. EPA, with cooperation from the State, issued a Remedial Investigation Report to the public on July 14, 1999, and EPA, with cooperation from the State, completed the final Feasibility Study ("FS") Report on September 29, 1999.

I. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the completion of the FS and of the proposed plan for remedial action on July 14, 1999, in a major local newspaper of general circulation. EPA provided an opportunity for written and oral comments from the public on the proposed plan for remedial action. A copy of the transcript of

the public meeting is available to the public as part of the administrative record on which the Regional Administrator based the selection of the response action.

J. EPA's decision regarding the remedial action to be implemented at the Site is embodied in a final Record of Decision ("ROD") executed on September 29, 1999. The State reviewed, provided input for, and concurs with the ROD. The ROD includes EPA's explanation for any significant differences between the final plan and the proposed plan as well as a responsiveness summary to the public comments. Notice of the final plan was published in accordance with Section 117(b) of CERCLA, 42 U.S.C. § 9617(b).

K. EPA will implement the remedial action. The purpose of this Consent Decree is to provide for Settling Defendant's payment of his alleged share of the cost of the remedial action and the United States' other response costs.

L. The United States has reviewed the Financial Information submitted by Settling Defendant to determine whether Settling Defendant is financially able to pay response costs incurred and to be incurred at the Site. Based upon this Financial Information, The United States has determined that Settling Defendant is able to pay the amounts specified in Section VI (Payment of Response Costs).

M. The Parties agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and implementation of this Consent Decree will expedite the cleanup of the Site and will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

THEREFORE, with the consent of the parties to this Decree, it is ORDERED,  
ADJUDGED, AND DECREED:

## **II. JURISDICTION**

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9607 and 9613(b). This Court also has personal jurisdiction over Settling Defendant. Solely for the purposes of this Consent Decree and the underlying complaint, Settling Defendant waives all objections and defenses that he may have to jurisdiction of this Court or to venue in this District. Settling Defendant shall not challenge the entry of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

## **III. PARTIES BOUND**

2. This Consent Decree is binding on the United States and on Settling Defendant and his heirs, successors, and assigns. Any change in ownership or other legal status, including but not limited to any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of Settling Defendant under this Consent Decree. This Paragraph shall not be read to provide for any additional payments once the requirements of Section VI (Payment of Response Costs) and Section VII (Failure to Comply with Consent Decree) (if any) have been met.

## **IV. DEFINITIONS**

3. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are

used in this Consent Decree or in any appendix attached hereto, the following definitions shall apply:

- a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 *et seq.*
- b. "Closing Costs" shall mean expenses reasonably incurred and actually paid by Settling Defendant on or before the date of closing associated with the sale or transfer of the Property, or any part of the Property including, but not limited to, sales commissions.
- c. "Consent Decree" shall mean the body of this Consent Decree and all attached appendices. In the event of a conflict between the body of this Consent Decree and the attached appendices, the body of this Consent Decree shall control.
- d. "Day" shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or Federal Holiday, the period shall run until the close of business of the next working day.
- e. "DOJ" shall mean the United States Department of Justice and any successor departments, agencies or instrumentalities of the United States.
- f. "DOJ Costs" shall mean all costs, including but not limited to direct and indirect costs, that DOJ on behalf of EPA will incur for response actions at the Site after the date of entry of this Consent Decree.
- g. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.
- h. "EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

i. “Fair Market Value” shall, except in the event of a foreclosure or transfer by deed or other assignment in lieu of foreclosure, mean the price at which the Property would change hands between a willing buyer and a willing seller under actual market conditions, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts. In the event of a transfer by foreclosure, “Fair Market Value” shall mean the amount obtained at the foreclosure sale. In the event of a transfer by a deed or other assignment in lieu of foreclosure, “Fair Market Value” shall mean the balance of Settling Defendant’s mortgage on the Property at the time of the transfer.

j. “Fair Market Rate” shall mean the rate at which the Property would be leased from a willing lessor to a willing lessee, under actual market conditions, neither being under any compulsion to enter into a lease, and both having reasonable knowledge of relevant facts.

k. “Financial Information” shall mean those financial documents identified in Appendix A.

l. “Interest” shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

m. “IRS” shall mean the United States Internal Revenue Service and any successor departments, agencies or instrumentalities of the United States.

- n. "Net Sales Proceeds" shall mean the total value of all consideration received by Settling Defendant for each Transfer less Closing Costs.
- o. "Paragraph" shall mean a portion of this Consent Decree identified by an arabic numeral or an upper or lower case letter.
- p. "Parties" shall mean the United States and Settling Defendant.
- q. "Property" shall mean the property owned by the Settling Defendant and described at Appendix B.
- r. "Record of Decision" or "ROD" shall mean the EPA Record of Decision relating to the Site signed on September 29, 1999, by the Superfund Division Director, EPA Region 7, or his delegate, and all attachments thereto.
- s. "Remedial Action" shall mean the response actions at the Site set forth in the Record of Decision.
- t. "Section" shall mean a portion of this Consent Decree identified by a Roman numeral.
- u. "Settling Defendant" shall mean Lewis W. Williams, Jr.
- v. "Site" shall mean the 57<sup>th</sup> and North Broadway Superfund Site, encompassing approximately 300 acres, located generally south of 58<sup>th</sup> Street and north of 46<sup>th</sup> Street and west of Chisholm Creek Parkway and east of Armstrong Drive in Wichita, Sedgwick County, Kansas, and depicted generally on the map attached as Appendix C.
- w. "State" shall mean the State of Kansas.
- x. "Transfer" shall mean each sale, assignment, transfer or exchange by Settling Defendant (or his successors or heirs) of the Property, or any portion thereof, where title



to the Property (or any portion or interest thereof) i) is transferred and Fair Market Value is received in consideration, or ii) is transferred involuntarily by operation of law, including foreclosure and its equivalents following default on the indebtedness secured, in whole or in part, by the Property, including, but not limited to, a deed or other assignment in lieu of foreclosure.

A Transfer does not include a transfer pursuant to an inheritance or a bequest.

y. "United States" shall mean the United States of America.

z. "USAO" shall mean the Office of the United States' Attorney for the District of Kansas.

## **V. STATEMENT OF PURPOSE**

4. By entering into this Consent Decree, the mutual objective of the Parties is for Settling Defendant to make cash payments to address his alleged liability for the Site as provided in the Covenant Not to Sue by United States in Section VIII, and subject to the Reservations of Rights by United States in Section IX.

## **VI. PAYMENT OF RESPONSE COSTS**

5. Within 30 days of entry of this Consent Decree, Settling Defendant shall pay to the United States the sum of \$15,714.29. Additionally, on each anniversary date of the first payment for the succeeding 6 years, Settling Defendant shall pay to the United States the sum of \$15,714.29. The sum of the 7 payments required by this Paragraph is \$110,000.03. Settling Defendant shall ensure that the United States *receives* each payment required by this Paragraph on the date that each payment is due.

6. In addition to the payments required by Paragraph 5, Settling Defendant shall pay to the United States sixty percent of the gross income from the Property.

a. The first payment, consisting of sixty percent of the gross income from the Property received during calendar year 2001, shall be due within 30 days of entry of this Consent Decree. All subsequent payments shall be due on May 31 of the year following the year during which the income was received. Settling Defendant shall ensure that the United States *receives* each payment required by this Paragraph on the date that each payment is due.

b. Settling Defendant shall mail a copy of the federal tax schedule on which the gross income from the Property is reported for calendar year 2001 to DOJ and EPA at the addresses specified in Paragraph 32 of this Consent Decree within 30 days of entry of this Consent Decree, or within ten days after submitting the federal tax schedule to IRS, whichever date occurs later. For all subsequent years, Settling Defendant shall mail a copy of the federal tax schedule on which the gross income from the Property is reported to DOJ and EPA at the addresses specified in Paragraph 32 of this Consent Decree by May 31 of the year following the year during which the income was received. If Settling Defendant has not submitted the federal tax schedule for the year during which the gross income from the Property is reported to IRS by May 31 of the year following the year during which the income was received, Settling Defendant nevertheless shall make the payment required by this Paragraph by the May 31 due date and shall mail a copy of the federal tax schedule to DOJ and EPA at the addresses specified in Paragraph 32 of this Consent Decree within ten days after submitting the federal tax schedule to IRS.

c. The obligation to pay the United States sixty percent of the gross income from the Property shall apply to all gross income received from the Property until all of the Property is sold or until payments pursuant to this Paragraph equal \$4,587,692.34, whichever event occurs first.

i. The \$4,587,692.34 cap on payments required by this Paragraph shall be reduced by the amount of any payments that the United States receives pursuant to a settlement with any other potentially responsible parties for the Site other than Settling Defendant and Koch Industries, Inc. ("Koch").

ii. The \$4,587,692.34 cap on payments required by this Paragraph also shall be reduced by the amount of any payments that the United States receives pursuant to a judgment other than a Consent Decree against any other potentially responsible parties for the Site other than Settling Defendant and Koch less DOJ Costs.

7. In addition to the payments required by Paragraphs 5 and 6, Settling Defendant agrees to notify DOJ and EPA at the addresses specified in Paragraph 32 of this Consent Decree of a pending Transfer of all or any part of the Property at least 60 days before the closing date.

a. The notice to DOJ and EPA shall include:

i. The purchase price (even if it is zero), other non-cash consideration for the Transfer and a good faith estimate of the value of the non-cash consideration, and a good faith estimate of Closing Costs; and

ii. a written report of an appraisal stating the Fair Market Value of the property (or any portion thereof) dated no earlier than 70 days before the closing date prepared by an appraiser who is a Member of the Appraisal Institute and licensed in the State.

b. Within 15 days after receiving Settling Defendant's written notice of a pending Transfer of the Property and the required written appraisal report, the United States may, at its election, notify Settling Defendant in writing of the United States' intention to conduct its own appraisal stating the Fair Market Value of all or any part of the Property and provide

Settling Defendant a copy of the written appraisal report within 30 days of the date of the written notice. The United States' written appraisal report shall be prepared by an appraiser who is a Member of the Appraisal Institute and licensed in the State. The Fair Market Value shall then be deemed to be the arithmetic mean of the two appraised values.

c. Prior to the closing date for the Transfer of all or any part of the Property, the United States shall notify Settling Defendant of the specific amount that the United States will require Settling Defendant to pay as reimbursement for past and future response costs at the Site. The maximum amount the United States may demand for a sale pursuant to this Paragraph shall be the greater of the following two values: (1) ninety percent of the Net Sales Proceeds; or (2) ninety percent of the Fair Market Value of all or any part of the Property, as established by the procedures referenced in Paragraphs 7(a) and (b), less closing costs; provided, however, that the total amount demanded for all sales pursuant to this Paragraph cannot exceed \$4,587,692.34, less the sum of: (1) the amount that the United States has collected pursuant to Paragraph 6; (2) the amount of any payments that the United States receives pursuant to a settlement with any other potentially responsible parties for the Site other than Settling Defendant and Koch Industries, Inc. ("Koch"); and (3) the amount of any payments that the United States receives pursuant to a judgment other than a Consent Decree against any other potentially responsible parties for the Site other than Settling Defendant and Koch less DOJ Costs.

d. On or before the closing date of the Transfer of all or any part of the Property, Settling Defendant shall pay the United States the amount specified by the United States pursuant to Paragraph 7(c) above. Settling Defendant shall ensure that the United States receives payment(s) required by this Paragraph no later than one Day after the closing date.

e. If Settling Defendant does not make the payment required by Paragraph 7(d) by the deadline specified in Paragraph 7(d), Settling Defendant shall not consummate the Transfer of all or any part of the Property.

8. Settling Defendant agrees to pay all past, current, future real estate taxes on the Property until it is sold. Settling Defendant further agrees not to mortgage or otherwise encumber the Property, except by leasing it at the Fair Market Rate.

9. In the event of a Transfer of all or any part of the Property, the Parties shall continue to be bound by all remaining terms and conditions, and subject to all of the benefits of this Consent Decree. This Paragraph shall not be read to provide for any additional payments once the other requirements of Section VI (Payment of Response Costs) and Section VII (Failure to Comply with Consent Decree) (if any) have been met.

10. Payments pursuant to Paragraphs 5-7 of this Consent Decree shall be made by FedWire Electronic Funds Transfer ("EFT") to the DOJ account in accordance with current EFT procedures, referencing the USAO File Number to be provided by the USAO, EPA Region and Site Spill Identification Number 07EF, and DOJ Case Number 90-11-3-1737. Payments shall be made in accordance with instructions provided to Settling Defendant by the Financial Litigation Unit of the USAO after the Consent Decree is entered. Any payment received by the Department of Justice after 4:00 p.m. Eastern Time shall be credited on the next business day.

11. At the time of each payment, Settling Defendant shall send notice that payment has been made to EPA and DOJ in accordance with Section XIV (Notices and Submissions) and to:

John Anderson, PLMG/RFMB  
United States Environmental Protection Agency  
Region VII  
901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101

12. The total amount to be paid by Settling Defendant pursuant to this Consent Decree shall be deposited in the 57<sup>th</sup> and North Broadway Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance any response actions at or in connection with the Site.

#### **VII. FAILURE TO COMPLY WITH CONSENT DECREE**

13. Interest on Late Payments. If Settling Defendant fails to make any payment under Section VI (Payment of Response Costs) by the required due date, all remaining installment payments and all accrued Interest shall become due immediately upon such failure. Interest shall continue to accrue on any unpaid amounts until the total amount due has been received.

14. Stipulated Penalty. If any payments due to the United States under this Consent Decree are not *received* by the required date, Settling Defendant shall pay as a stipulated penalty, in addition to the Interest required by Paragraph 13, \$50 per day that such payment is late. Stipulated penalties are due and payable within 30 days of Settling Defendant's receipt from EPA of a demand for payment of the penalties. All payments under this Paragraph shall be paid by certified check made payable to "EPA Hazardous Substance Superfund" and reference the 57<sup>th</sup> & North Broadway Superfund Site, EPA Region VII and the Site/Spill Identification Number 07EF, the DOJ Case Number 90-11-3-1737, and the name and address of the party making payment and shall be mailed to:

Mellon Bank  
EPA - Region VII Superfund  
FNMG Section, Post Office Box 360748M  
Pittsburgh, Pennsylvania 15251

Copies of checks paid pursuant to this Paragraph, and any accompanying transmittal letter, shall be mailed to the United States at the addresses specified in Paragraph 32 of this Consent Decree and to:

John Anderson, PLMG/RFMB  
United States Environmental Protection Agency  
Region VII, 901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101

Penalties shall accrue as provided above regardless of whether EPA has notified the Settling Defendant of the violation or made a demand for payment, but need only be paid on demand. All penalties shall begin to accrue on the day after payment is due and shall continue to accrue through the date of payment. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

15. If the United States must bring an action to collect any payment required by this Consent Decree, Settling Defendant shall reimburse the United States for all expenses of such action including, but not limited to, the expense of attorney time.

16. Payments made under Paragraphs 13-15 shall be in addition to any other remedies or sanctions available to the United States by virtue of Settling Defendant's failure to make timely payments required by this Decree.

17. Notwithstanding any other provision of this Section, the United States, in its unreviewable discretion, may waive payment of any portion of the stipulated penalties that have accrued pursuant to this Consent Decree, and may waive the application of any part Paragraph 13

(Interest on Late Payments). Payment of stipulated penalties shall not excuse Settling Defendant from payment as required by Section VI (Payment of Response Costs) or from performance of any other requirements of this Consent Decree.

#### **VIII. COVENANT NOT TO SUE BY UNITED STATES**

18. Except as specifically provided in Section IX (Reservation of Rights by United States), the United States covenants not to sue or to take administrative action against Settling Defendant pursuant to Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607, with regard to the Site. With respect to present and future liability, this covenant shall take effect upon receipt by EPA of the first payment required by Paragraph 5. This covenant not to sue is conditioned upon the complete and satisfactory performance by Settling Defendant of his obligations under this Consent Decree, including but not limited to, payment of all amounts due under Section VI (Payment of Response Costs), and any amount due under Section VII (Failure to Comply with Consent Decree). This covenant not to sue is also conditioned upon the veracity and completeness of the Financial Information provided to EPA by Settling Defendant. If the Financial Information is subsequently determined by EPA to be false or, in any material respect inaccurate, Settling Defendant shall forfeit all payments made pursuant to this Consent Decree and this covenant not to sue and the contribution protection in Paragraph 25 shall be null and void. Such forfeiture shall not constitute liquidated damages and shall not in any way foreclose the United States' right to pursue any other causes of action arising from Settling Defendant's false or materially inaccurate information. This covenant not to sue extends only to Settling Defendant and does not extend to any other person or entity.



## **IX. RESERVATION OF RIGHTS BY UNITED STATES**

19. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendant with respect to all matters not expressly included within the Covenant Not to Sue by United States in Paragraph 18. Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against Settling Defendant with respect to:

- a. liability for failure of Settling Defendant to meet a requirement of this Consent Decree;
- b. criminal liability;
- c. liability arising from the past, present, or future disposal, release or threat of release of a hazardous substance, pollutant, or contaminant outside of the Site;
- d. liability, if any, for violations of federal or state law which occur during or after implementation of the Remedial Action; and
- e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments.

20. Notwithstanding any other provision of this Consent Decree, EPA reserves, and this Consent Decree is without prejudice to, the right to reinstitute or reopen this action, or to commence a new action seeking relief other than as provided in this Consent Decree, if the Financial Information provided by Settling Defendant, or the financial certification made by Settling Defendant in Paragraph 31, is false or, in any material respect, inaccurate.

## **X. COVENANTS BY SETTLING DEFENDANT**

21. Settling Defendant hereby covenants not to sue and agrees not to assert any claims or causes of action against the United States or its contractor or employees, with respect to the Site or this Consent Decree including, but not limited to:

- a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund based on Sections 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9607, 9611, 9612, and 9613, or any other provision of law;
- b. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or
- c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site. Except as provided in Paragraph 23 (Waiver of Claims) and Paragraph 27 (Waiver of Claim-Splitting Defenses), these covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraph 19 (c) - (e), but only to the extent that Settling Defendant's claims arise from the same response action or response costs that the United States is seeking pursuant to the applicable reservation.

22. Nothing in this Consent Decree shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611 or 40 C.F.R. § 300.700(d).

23. Waiver of Claims. Settling Defendant agrees not to assert any claims and to waive all claims or causes of action that he may have for all matters relating to the Site, including

for contribution, against any person where the person's liability to Settling Defendant with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site, if the materials contributed by such person to the Site containing hazardous substances did not exceed the greater of (i) 0.002% of the total volume of waste at the Site, or (ii) 110 gallons of liquid materials or 200 pounds of solid materials. This waiver shall not apply to any claim or cause of action against any person meeting the above criteria if EPA has determined that the materials contributed to the Site by such person contributed or could contribute significantly to the costs of response at the Site.

#### **XI. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION**

24. Except as provided in Paragraph 25, nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Consent Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this Decree may have under applicable law. Except as provided in Paragraph 23, the Parties expressly reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which they may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a party to this Consent Decree.

25. The Parties agree, and by entering this Consent Decree this Court finds, that Settling Defendant is entitled, as of the date of entry of this Consent Decree, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), for "matters addressed" in this Consent Decree. The "matters addressed" in this

Consent Decree are all response actions taken or to be taken and all response costs incurred or to be incurred, at or in connection with the Site, by the United States or any other person. The “matters addressed” in this Consent Decree do not include those response costs or response actions as to which the United States has reserved its rights under this Consent Decree (except for claims for failure to comply with this Decree), in the event that the United States asserts rights against Settling Defendant coming within the scope of such reservations.

26. Settling Defendant agrees that, with respect to any suit or claim for contribution brought by him for matters related to this Consent Decree, he will notify EPA and DOJ in writing no later than 60 days prior to the initiation of such suit or claim. Settling Defendant also agree that, with respect to any suit or claim for contribution brought against him for matters related to this Consent Decree, he will notify EPA and DOJ in writing within 10 days of service of the complaint or claim on him. In addition, Settling Defendant shall notify the United States within 10 days of service or receipt of any Motion for Summary Judgment, and within 10 days of receipt of any order from a court setting a case for trial, for matters related to this Consent Decree.

27. Waiver of Claim-Splitting Defenses. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, Settling Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, claim preclusion, issue preclusion, claim-splitting, or other defenses based on any contention that the claims raised by the United States in the subsequent proceeding were or should have been

brought in this case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenant Not to Sue by United States set forth in Section VIII.

## **XII. SITE ACCESS**

28. Commencing on the date of lodging of this Consent Decree, if the Site, or any other property where access is needed to implement response activities at the Site, is owned or controlled by Settling Defendant, Settling Defendant shall:

a. provide the United States and its representatives, including EPA and its contractors, access at all reasonable times to the Site and any other property owned or controlled by Settling Defendant to which access is required for the implementation of response actions for the Site including, but not limited to:

- i. Monitoring investigation, remedial or other activities at the Site;
- ii. Verifying any data or information submitted to the United States;
- iii. Conducting investigations relating to contamination at or near the Site;
- iv. Obtaining samples;
- v. Assessing the need for, planning, or implementing response actions at or near the Site;
- vi. Assessing the Settling Defendant's compliance with this Consent Decree; and
- vii. Determining whether the Site or other property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to this Consent Decree; and

b. refrain from using the Site, or such other property, in any manner that would interfere with or adversely affect the implementation, integrity or protectiveness of the remedial measures to be performed at the Site.

### **XIII. RETENTION OF RECORDS**

29. Until 10 years after the entry of this Consent Decree, Settling Defendant shall preserve and retain all records and documents now in his possession or control or which come into his possession or control that relate in any manner to response actions taken at the Site or the liability of any person for response actions conducted and to be conducted at the Site.

30. After the conclusion of this document retention period, Settling Defendant shall notify the United States at least 90 days prior to the destruction of any such records or documents, and, upon request by the United States, Settling Defendant shall deliver any such records or documents to EPA. Settling Defendant may assert that certain documents, records, and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendant asserts such a privilege, he shall provide the United States with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted. However, no documents, records, or other information created or generated pursuant to the requirements of this or any other Consent Decree with the United States shall be withheld on the grounds that they are privileged. If a claim of privilege applies only to a portion of a document,

the document shall be provided to the United States in redacted form to mask the privileged information only.

31. Settling Defendant hereby certifies that, to the best of his knowledge and belief, after thorough inquiry, he has:

a. not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents, or other information relating to his potential liability regarding the Site since notification of potential liability by the United States regarding the Site, and that he has fully complied with any and all EPA requests for information regarding the Site and Settling Defendant's financial circumstances pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e); and

b. submitted to the United States Financial Information that fairly, accurately, and materially sets forth his financial circumstances, and that those circumstances have not materially changed between the time the Financial Information was submitted to EPA and the time Settling Defendant executes this Consent Decree.

#### **XIV. NOTICES AND SUBMISSIONS**

32. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other party in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, and the Settling Defendant, respectively.

As to the United States (DOJ and EPA):

As to DOJ:

Bruce S. Gelber  
Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
United States Department of Justice  
Benjamin Franklin Station  
Post Office Box 7611  
Washington, D.C. 20044-7611  
Re: DJ No. 90-11-3-1737

and

Paul R. Stokstad  
Trial Attorney, Environmental Enforcement Section  
Environment and Natural Resources Division  
United States Department of Justice  
Benjamin Franklin Station  
Post Office Box 7611  
Washington, D.C. 20044-7611  
Re: DJ No. 90-11-3-1737

As to EPA:

Steven L. Sanders  
Assistant Regional Counsel  
United States Environmental Protection Agency  
Region VII  
901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101

and

Steven Kinser  
EPA Project Manager  
United States Environmental Protection Agency  
Region VII  
901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101



As to Settling Defendant:

Jeffrey D. Leonard  
Triplett, Woolf & Garretson, L.L.C.  
Counsel for Lewis W. Williams, Jr.  
2959 North Rock Road, Suite 300  
Wichita, Kansas 67226

**XV. RETENTION OF JURISDICTION**

33. This Court shall retain jurisdiction of this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

**XVI. INTEGRATION/APPENDICES**

34. This Consent Decree and its appendices constitute the final, complete and exclusive Consent Decree and understanding between the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree. The following appendices are attached to and incorporated into this Consent Decree:

“Appendix A” is a list of financial documents submitted to the United States by Settling Defendant.

“Appendix B” is the legal descriptions of Settling Defendant’s Property.

“Appendix C” is a map of the Site.

**XVII. MODIFICATIONS**

35. No material modifications shall be made to this Consent Decree without the written approval of the United States, Settling Defendant, and this Court. Modifications that are

not material may be made by written agreement between the United States and Settling Defendant.

#### **XVIII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT**

36. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. Settling Defendant consents to the entry of this Consent Decree without further notice.

37. If for any reason this Court should decline to approve this Consent Decree in the form presented, this Consent Decree is voidable at the sole discretion of any party and the terms of the Consent Decree may not be used as evidence in any litigation between the Parties.

#### **XIX. SIGNATORIES/SERVICE**

38. Settling Defendant and the Principal Deputy Chief of the Environmental Enforcement Section of the Environment and Natural Resources Division of the United States Department of Justice each certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such party to this document.

39. Settling Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the United States has notified Settling Defendant in writing that it no longer supports entry of the Consent Decree.

40. The Settling Defendant shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on behalf of him with respect to all matters arising under or relating to this Consent Decree. Settling Defendant

hereby agrees to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons.

**XX. FINAL JUDGMENT**

41. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute the final judgment between the United States and Settling Defendant. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 200\_\_.

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United States District Judge

THE UNDERSIGNED PARTIES enter into this Consent Decree relating to the 57<sup>th</sup> and North Broadway Superfund Site.

FOR THE UNITED STATES OF AMERICA

Date: Jan 13, 2006

SUE ELLEN WOOLDRIDGE /  
Assistant Attorney General  
Environment and Natural Resources Division  
United States Department of Justice

Date: Jan. 3, 2006

ROBERT E. MAHER, JR. /  
Assistant Section Chief  
Environmental Enforcement Section  
Environment and Natural Resources Division  
United States Department of Justice  
P.O. Box 7611, Ben Franklin Station  
Washington, D.C. 20044  
(202) 514-4241

ORIGINAL SIGNATURE PAGES ARE ON FILE

**Appendix A: Financial Documents Received by the United States from Settling Defendant**

1. 1996 Joint Income Tax Return for Lewis W. Williams and Marlene L. Williams.
2. 1997 Joint Income Tax Return for Lewis W. Williams and Marlene L. Williams.
3. 1998 Joint Income Tax Return for Lewis W. Williams and Marlene L. Williams.
4. 1999 Joint Income Tax Return for Lewis W. Williams and Marlene L. Williams.
5. Financial Data Request Form ("Individual Ability to Pay Claim") dated February 22, 2000.

## **Appendix B: Site Description**

### Location of Clearwater Facility

A tract in the Southwest 1/4 of Section 16, Township 26-S, R-1-E, described as beginning at a point 1283 feet North and 40 feet East of the Southwest Corner of said Southwest 1/4, thence east parallel with the South line of said Section 199 feet, thence South 485.25 feet, thence East approximately 165 feet to the West line of the Chisholm Creek Diversion right-of-way (Case A-41501), thence North along said right-of-way to the South line of the North 1/2 of the North 1/2 of said Southwest 1/4, thence West along said line 320 feet to a point 40 feet East of the West line of said Southwest 1/4, thence South 678.72 feet to the point of beginning. Commonly known as 5648 North Broadway.

### Location of Midland Refinery

A tract in the Southeast 1/4 of Section 17, Township 26-2, R-1-E, described as commencing on the intersection of the center line of the Main Track of the St. Louis & San Francisco Railroad with the East line of said Southeast quarter; thence North along said East line 1390 feet; thence West at right angles 40 feet for a place of beginning; thence North parallel with the East line of said Southeast 1/4, 140 feet; thence West at right angles approximately 910 feet to the Easterly right away line of said railroad; thence Southeasterly along said railroad approximately 610 feet to a point 614.67 feet West of, measured at right angles, the said East line of the Southeast 1/4; thence East 259.67 feet; thence North 314 feet; thence East 315 feet to the place of beginning. Commonly known as 5755 North Broadway.

### Former Location of Farmland Facility

A tract in the Southeast Quarter of Section 17, Township 26 South, Range 1 East, described as follows:

Commencing at the intersection of the center line of the Main Track of the St. Louis & San Francisco Railroad with the East line of said Southeast Quarter (SE 1/4); thence North along said East line 1076 feet; thence West at right angles 40 feet for a place of beginning; thence North parallel with the East line of said Southeast Quarter (SE 1/4), 314 feet; thence West at right angles 315 feet; thence South at right angles 314 feet; thence East 315 feet to the place of beginning, commonly known as 5725 North Broadway.

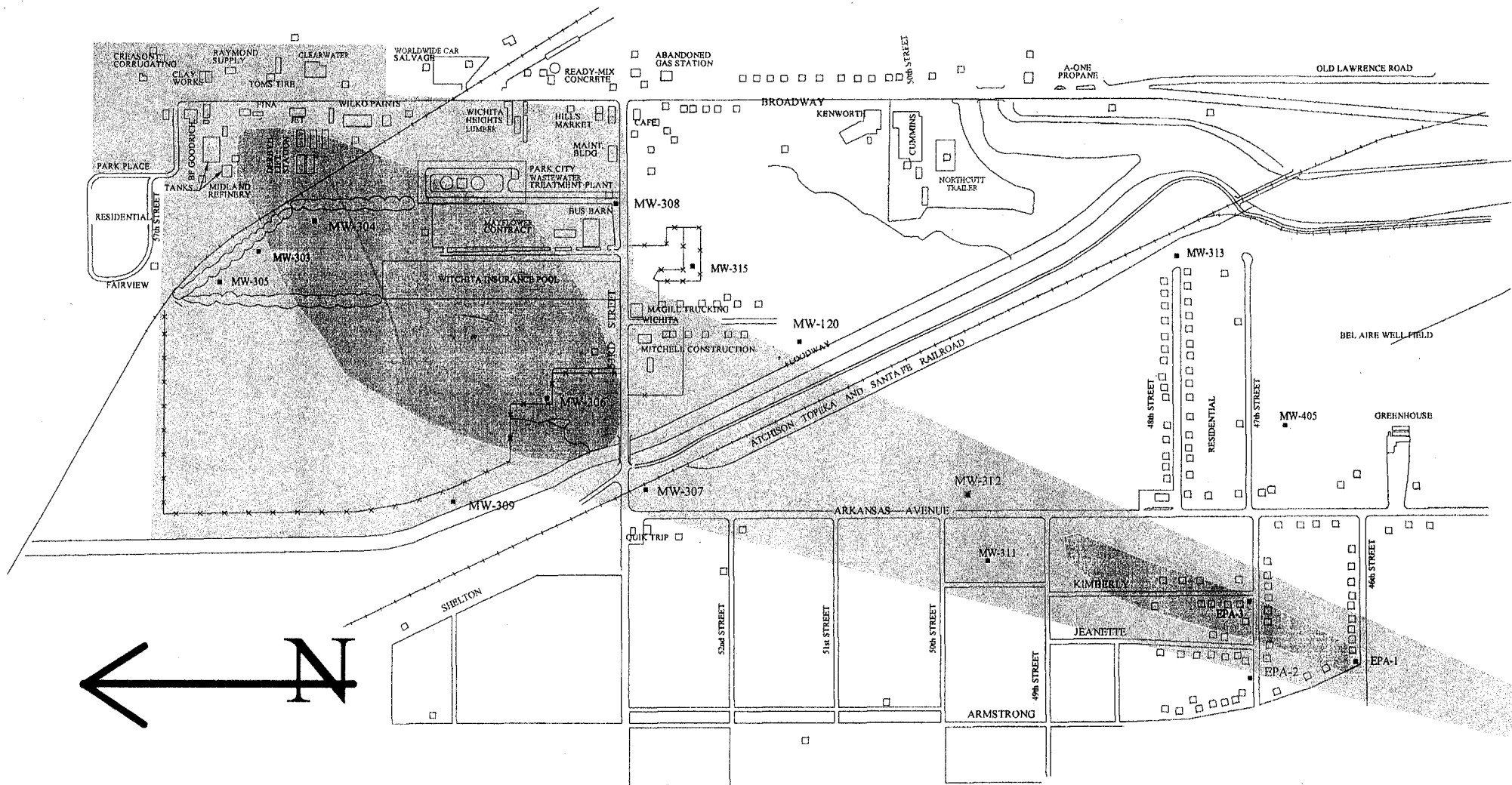
### Former Location of Wilko Facility

A tract in the SE 1/4 of Section 17, Township 26 South, Range 1 East, described as commencing at the intersection of the center line of the main track of the St. Louis and San Francisco Railroad with the East line of said SE 1/4; thence North along said East line 480 feet; thence West at right



angles 373.7 feet to the Easterly right of way line of said Railroad; thence Southeasterly along said Railroad 324.5 feet to a point West of the place of beginning, and measured at right angles to the East line of said SE 1/4; thence East 201.53 feet to the place of beginning.



## **Appendix C: Map of Site**



# 57th & N. Broadway Monitoring Map

 Approximate Plume Location  
 Site Boundry